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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 ANA TERESA PHILLIPS,) Case No. 2:16-cv-02322-RFB-GWF
12)
Plaintiff,)
13)
vs.)
14)
SUN LIFE ASSURANCE COMPANY)
15 OF CANADA; DOES I through X,)
16 inclusive; and ROE CORPORATIONS I)
through X, inclusive,)
17)
Defendants.)
18)
_____)

19 **AMENDED COMPLAINT IN CIVIL ACTION**

20 **NATURE OF ACTION, JURISDICTION AND VENUE**

21
22 1. This action arises under the Employee Retirement Income Security Act of 1974
23 (hereinafter "ERISA") 29 U.S.C. §1001, et seq., and more particularly Section 1132(a)(1)(B)
24 thereof.

25 2. Jurisdiction is vested in this Court because of the presence of a federal question, 28
26 U.S.C. §1331 and the Court's jurisdiction under ERISA, 29 U.S.C. §1132.

27 ///

1 12. Plaintiff sought to claim benefits under the Policy with Defendant and fully
2 complied with all of the requests and conditions under the policy. Plaintiff also exhausted all of the
3 administrative remedies.

4 13. Defendant has failed to honor the terms and conditions of the policy and to pay
5 Plaintiff the benefits to which she is entitled.
6

7 **FIRST CAUSE OF ACTION**
8 **[Specific Performance]**

9 14. Plaintiff repeats and realleges each and every allegation contained in Paragraphs
10 1 through 13 of this Complaint, and incorporates the same herein as if set forth in full.

11 15. The parties entered into an enforceable agreement under which Defendant would
12 provide disability benefits to Plaintiff under the terms of the Policy.

13 16. The contract terms were reasonable and there was adequate consideration paid by
14 the Plaintiff under the terms of the Policy.

15 17. Plaintiff requested the benefits to which she was entitled under the policy and was
16 refused.
17

18 18. Legal remedies are unavailable to Plaintiff and she, therefore, requests this Court
19 declare the Policy to be in effect and that Defendant provide the entitled benefit.

20 19. Plaintiff has been required to retain the services of an attorney to prosecute this
21 action, and is, therefore, entitled to a reasonable award of attorneys' fees and costs.
22

23 **SECOND CAUSE OF ACTION**
24 **[Breach of Fiduciary Duty]**

25 20. Plaintiff repeats and realleges each and every allegation contained in Paragraphs
26 1 through 19 of this Complaint, and incorporates the same herein as if set forth in full.

27 21. Defendant is a Fiduciary under the terms of ERISA.
28

22. Defendant breached its fiduciary duty to Plaintiff by failing to act in Plaintiff's best interests and by improperly denying benefits to Plaintiff under the terms of the Policy.

23. As a direct and proximate result of Defendant's breach, a cognizable loss to the Plaintiff resulted including the denial of benefits to which Plaintiff was and is entitled.

24. Plaintiff has been required to retain the services of an attorney to prosecute this action, and is, therefore, entitled to a reasonable award of attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Honorable Court to grant judgment in her favor and against Defendant and seeks the following relief:

- (a) an adjudication that Plaintiff is presently totally disabled as that term is defined in the Policy and is entitled to continuous and uninterrupted disability payments for as long as her medical condition persists pursuant to the terms and conditions of the Policy;
- (b) an award to Plaintiff of all applicable disability payments to which she is entitled, retroactive to the first date to which she complied with the terms of the Policy;
- (c) an award of costs, reasonable attorney fees and prejudgment interest; and
- (d) such other and further relief as this Court deems just and appropriate.

DATED this 12th day of October, 2016.

JONES WILSON LLP

By

CORY M. JONES, ESQ.

Nevada Bar No. 5028

1522 W. Warm Springs Road

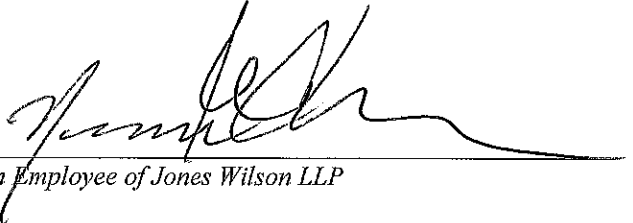
Henderson, NV 89014

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I hereby certify under penalty of perjury that on this 12th day of October, 2016, the foregoing **AMENDED COMPLAINT** **IN CIVIL ACTION NATURE OF ACTION, JURISDICTION AND VENUE** was served upon the parties via the Court's e-filing and service program, addressed as follows:

Jill Garcia, Esq.
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